

**RULES
OF
TENNESSEE BOARD OF COMMUNICATION DISORDERS AND SCIENCES
COUNCIL FOR LICENSING HEARING INSTRUMENT SPECIALISTS
DIVISION OF HEALTH RELATED BOARDS**

**CHAPTER 1370-2
GENERAL RULES GOVERNING HEARING INSTRUMENT SPECIALISTS**

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1370-2-.01 DEFINITIONS. As used in this rule, the terms and acronyms shall have the following meanings ascribed to them.

- (1) Advertise - Informational communication to the public in any manner to attract attention to the practice as a hearing instrument specialist. This includes, but is not limited to, business solicitations with or without qualifications, in a card, sign, or device to any person; or the causing, permitting or allowing any signs or marking on or in any building or structure, or in any newspaper, or magazine or in any directory, or on radio or television or by advertising by any other means designed to secure public attention.
- (2) Applicant - an individual seeking licensure by the Council who has submitted the appropriate application and fees.
- (3) Apprentice - a person who is registered with the Council, engaged in an approved licensing program, and sponsored by a hearing instrument specialist duly licensed in Tennessee.
- (4) Apprentice license - a license issued for not longer than one (1) year by the Council to apprentices which authorizes the fitting and selling of hearing aids, pursuant to T.C.A. §63-17-208, under the direct supervision of a sponsoring licensed hearing instrument specialist.
- (5) Board - The Board of Communications Disorders and Sciences.
- (6) Consumer - That member of the public who seeks the services of a licensed hearing instrument specialist.
- (7) Council - The Council for Licensing Hearing Instrument Specialists.
- (8) Council Administrative Office - The office of the Unit Director assigned to the Council located at First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010.

(Rule 1370-2-.01, continued)

- (9) Council Designee - Any person who has received a written delegation of authority from the Council to perform functions subject to review and ratification by the full Council where provided by these rules.
- (10) Clock hour - A clock hour represents (60 minutes) actual time in a continuing education activity. Providers who measure continuing education activities in “continuing education units” shall define CEU in clock hours.
- (11) Closed file - An administrative action which renders an incomplete, denied, or abandoned file closed.
- (12) Continuing education - Continuing education is considered to be education beyond the basic licensing education requirement and which is related to the practice of hearing instrument dispensing.
- (13) Direct supervision - The requirement of a sponsoring licensee to direct, coordinate, review, inspect, and approve each act of service performed by an apprentice licensee in connection with the practice of dispensing and fitting hearing instruments, but does not require the constant actual physical presence of the sponsoring licensee, pursuant to rule 1370-2-.14.
- (14) Division - The Division of Health Related Boards, Tennessee Department of Health, from which the Council receives administrative support.
- (15) Examination fee - to be paid each time an examination or component of an examination is taken.
- (16) Fee - money or anything of value including, but not limited to, a salary offered or received as compensation in return for rendering services.
- (17) Fitting and/or dispensing hearing instruments - the evaluation or measurement of human hearing by the use of an audiometer for the purpose of making selections, adaptations and/or sale of hearing instruments. The term also includes the sale of hearing instrument and the making of impressions for earmolds to be used as part of the hearing instrument.
- (18) HRB - When the acronym HRB appears in this rule, it is intended to mean the Division of Health Related Boards.
- (19) He/She - In these rules, all references to the masculine gender shall also apply to the feminine gender.
- (20) Hearing Instrument (Aid) - any instrument or device designed for, or offered for the purpose of, aiding or improving impaired human hearing, and any parts, attachments or accessories of such an instrument or device.
- (21) Licensed Hearing Instrument Specialist (HIS) - A licensed person who engages in the fitting or selling of hearing instruments to an individual with impaired hearing.
- (22) IHS - When the acronym IHS appears in the rule, it is intended to mean International Hearing Society.
- (23) License - Document issued to an applicant who successfully completes the licensure process. The license takes the form of an “artistically designed” license as well as other versions issued bearing an expiration date.
- (24) Licensee - Any person who has been lawfully issued a license by the Council and Board to engage in the practice of dispensing and fitting hearing instruments.

(Rule 1370-2-.01, continued)

- (25) NBC-HIS - When the acronym NBC-HIS appears in this rule, it is intended to mean the National Board for Certification-Hearing Instruments Specialists.
- (26) NIHIS - When the acronym NIHIS appears in this rule, it is intended to mean National Institute for Hearing Instruments Studies.
- (27) Sell or sale - any transfer of title or of the right to use by lease, bailment, or any other contract, either oral or written, excluding transactions with distributors or dispensers.
- (28) Sponsor - A licensed hearing instrument specialist who is responsible for training and supervision of an individual holding an apprentice license.
- (29) Supervision - To coordinate, direct, and inspect continuously and at first hand the actions of an apprentice.
- (30) Training - the instruction of an apprentice in the practice of dispensing and fitting of hearing instruments.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-15-103, 63-17-105, and 6-17-203. **Administrative History:** For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.01 filed December 28, 1999; effective March 12, 2000. Amendment filed October 28, 2002; effective January 11, 2003.

1370-2-.02 SCOPE OF PRACTICE.

- (1) Nothing contained in these rules shall be construed to permit persons licensed under T.C.A. §§63-17-201 through 63-17-222 to treat the ear for any defect whatsoever in any manner nor to administer any drug.
- (2) Nothing contained in these rules shall be construed to apply to physicians and surgeons duly licensed by the Tennessee Board of Medical Examiners or the Tennessee Board of Osteopathic Examination.
- (3) Rights and privileges of licensure - Any person who possesses a valid unsuspended and unrevoked license has the right to use the title "hearing instrument specialist". No other person shall assume this title on any work, letter, sign, figure, advertisement, or device to indicate that the person using the same is a licensed HIS.
- (4) The practice of dispensing and fitting hearing instruments includes those practices used for the purposes of selection and adaption of hearing instruments, including direct observation of the ear, testing of hearing in connection with the fitting and selling of hearing instruments, taking of earmold impressions, fitting or sale of hearing instruments, and any necessary counseling.
- (5) The practice of selling hearing instruments does not include the act of concluding the transaction by a retail clerk.
- (6) Any person engaging in the fitting and sale of hearing instruments for a child under eighteen (18) years of age shall abide by FDA law and guidelines regarding dispensing of hearing instruments.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-15-103, 63-15-106, 63-17-203, and 63-17-206. **Administrative History:** For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Amendment filed March 1, 1990; effective April 15, 1990. Amendment

filed January 9, 1991; effective February 23, 1991. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.02 filed December 28, 1999; effective March 12, 2000.

1370-2-.03 NECESSITY OF LICENSURE. Unless an individual holds a current unrevoked or unsuspended Tennessee license, he may not engage in the sale of or practice of dispensing or fitting of hearing instruments.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-15-105, 6-17-203, and 63-17-205. **Administrative History:** For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.03 filed December 28, 1999; effective March 12, 2000.

1370-2-.04 PRELIMINARY QUALIFICATIONS FOR LICENSURE.

- (1) Licensed Hearing Instrument Specialist by examination:
 - (a) Eighteen (18) years of age or older; and
 - (b) Education equivalent to two (2) years of accredited college level course work.
- (2) Apprentice Hearing Instrument Specialist:
 - (a) Eighteen (18) years of age or older; and
 - (b) Education equivalent to two (2) years of accredited college level course work; and
 - (c) Sponsor to provide training and supervision.
- (3) Licensed Hearing Instrument Specialist by reciprocity:
 - (a) Eighteen (18) years of age or older; and
 - (b) Education equivalent to two (2) years of accredited college level course work; and
 - (c) Holds a current, unrevoked or unsuspended, license from another state or country.
 1. Out-of-state license issuance was based on passing the IHS examination or NBC/HIS Exam.
 - (i) Examination must have been proctored by a state licensing board member or designee in the state in which the applicant holds a current license.
 - (ii) A minimum score of seventy-five percent (75%) must have been achieved on each section of the written examination; or
 2. Applicant holds a current certification by the National Board for Certification-Hearing Instruments Specialist (NBC-HIS).
 3. An applicant must pass a written examination pertaining to Tennessee law relative to Hearing Instrument Specialists and also must pass a practical examination given by the Council as described in Rule 1370-2-.08.
 - (d) An individual whose license was not based on these requirements must file an application for Hearing Instrument Specialist by examination.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-15-107, 63-15-108, 63-15-111, 63-17-203, 63-17-207, 63-17-208, 63-17-209, and 63-17-211. **Administrative History:** For Administrative History prior to November, 1987 see page 1.

(Rule 1370-2-.04, continued)

Repeal and new rule filed September 24, 1987; effective November 8, 1987. Amendment filed March 1, 1990; effective April 15, 1990. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.04 filed December 28, 1999; effective March 12, 2000.

1370-2-.05 PROCEDURES FOR LICENSURE.

- (1) Licensed Hearing Instrument Specialist.
 - (a) An applicant shall obtain a current application packet from the Council's Administrative Office, respond truthfully and completely to every question or request for information contained in the form, and submit it along with all documentation and fees required by the form and this rule to the Council's Administrative Office. It is the intent of this rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all materials be filed simultaneously.
 - (b) Applications will be accepted throughout the year and processed in the Council's Administrative Office. Supporting documents, if requested by the Council, must be received by the Council's Administrative Office within sixty (60) days of receipt of the request or the application file shall be closed.
 - (c) It is the applicant's responsibility to provide evidence that he has fulfilled the educational requirements by instructing his college to submit an official transcript directly to the Council's Administrative Office. The transcript must carry the official seal of the school and reference the name under which the applicant has applied for licensure. If the name under which the transcript is issued differs from the applicant's current name, documentation must be submitted which supports such applicant's name change.
 - (d) An applicant shall pay the nonrefundable application fee as provided in Rule 1370-2-.06 and submit the fee with the application.
 - (e) An applicant shall pay, at the time of application, the examination fees pursuant to Rule 1370-2-.06.
 - (f) Every person desiring to engage in fitting and dispensing hearing instruments shall be required to pass the examination pursuant to Rule 1370-2-.08.
 - (g) An applicant shall submit with his application a signed passport-type photograph taken within the preceding twelve (12) months. The applicant must sign his/her name on the back of the photo and attach it to the appropriate page of the application.
 - (h) An applicant shall submit documentation from a medical doctor that, in his professional opinion, the applicant is physically capable of practicing his profession.
 - (i) An applicant shall submit with his application a certified photocopy of his birth certificate.
 - (j) An applicant shall disclose the circumstances surrounding any of the following:
 1. Conviction of any crime in any country, state, or municipality, except minor traffic violations.
 2. The denial of licensure application by any other state or the previous or pending discipline of the licensee in any state.

(Rule 1370-2-.05, continued)

- (2) Licensed Hearing Instrument Specialist by Upgrade from Apprentice Licensure Status to HIS Licensure by Examination.
 - (a) An individual who holds a Tennessee apprentice HIS license may, after ninety (90) days from the date of issuance of such license, submit to the Council's Administrative Office a request to upgrade to HIS licensure status by examination.
 - (b) Applications for upgrade will be accepted throughout the year and processed in the Council's Administrative Office.
 - (c) An applicant for upgrade shall obtain an application form from the Council's Administrative Office; however, an applicant will not be required to provide duplicates of documents which were submitted to support his application for apprentice.
 - (d) An applicant for upgrade shall submit the nonrefundable HIS application fee as provided in Rule 1370-2-.06 with his application for upgrade.
 - (e) An applicant for upgrade shall, at the time of application, pay the HIS examination fees as provided in Rule 1370-2-.06.
 - (f) An applicant for upgrade shall provide proof of sixty (60) classroom hours of approved instructions in Hearing Evaluations and/or Hearing Aid Fitting.
 - (g) An applicant for upgrade shall provide a photocopy of his apprentice license along with the application.
 - (h) An applicant for upgrade shall be required to pass the examinations pursuant to Rule 1370-2-.08 as a prerequisite to licensure.
- (3) Licensed Hearing Instrument Specialist by Reciprocity.
 - (a) Applications will be accepted throughout the year and processed in the Council's Administrative Office.
 - (b) An applicant shall obtain a current application form from the Council's Administrative Office, respond truthfully and completely to every question or request for information contained in the form, and submit it along with all documentation and fees required by the form and this rule to the Council's Administrative Office. It is the intent of this rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.
 - (c) It is the applicant's responsibility to provide evidence that he has fulfilled the educational requirements by instructing his college to submit an official transcript directly to the Council's Administrative Office. The transcript must carry the official seal of the school and reference the name under which the applicant has applied for licensure. If the name under which the transcript is issued differs from the applicant's current name, documentation must be submitted which supports such applicant's name change.
 - (d) An applicant shall pay the nonrefundable Application Fee as provided in Rule 1370-2-.06 and submit the fee with the application.
 - (e) An applicant shall pay the Examination Fee, at the time of application, pursuant to Rule 1370-2-.06.

(Rule 1370-2-.05, continued)

- (f) Passage of required examination(s) pursuant to Rule 1370-2-.08 is a prerequisite to licensure by reciprocity.
 - (g) An applicant shall submit with his application a signed, passport-type photograph taken within the preceding twelve (12) months. The applicant must sign his/her name on the back of the photo and attach it to the appropriate page of the application.
 - (h) An applicant shall provide documentation from a medical doctor that, in his professional opinion, the applicant is physically capable of practicing his profession.
 - (i) An applicant shall submit with his application a certified photocopy of his birth certificate.
 - (j) An applicant shall disclose the circumstances surrounding any of the following:
 - 1. Conviction of any crime in any country, state, or municipality, except minor traffic violations.
 - 2. The denial of licensure or the previous or pending discipline of a licensee by any other state or country.
 - (k) An applicant must submit a copy of his current certificate or license with certificate or license number from the other state.
 - (l) An applicant must submit a copy of his renewal certificate with the expiration date and certificate number from the other state.
 - (m) The applicant shall direct the National Board for Certification in Hearing Instruments Sciences to submit evidence that he is currently certified by the NBC-HIS or the applicant shall direct the IHS to submit documentation that he has passed the written examination, pursuant to Rule 1370-2-.08.
 - (n) The applicant shall direct the appropriate licensing Council in each state in which he holds or has held a license to send an official statement which indicates that such license is in effect and in good standing and under what provision such license was issued (i.e., examination, reciprocity, grandfathering, etc.). Such documentation must specify that the written examination was proctored by a state board member, or their designee.
 - (o) Only those persons who hold, at the time of application, a current unsuspended or unrevoked license from the state in which they are engaged in business may apply for licensure by reciprocity.
 - (p) If it is determined by the Council or the Board that an applicant does not meet the reciprocity requirements, he must file an application for licensure by examination.
- (4) Apprentice Licensed Hearing Instrument Specialist.
- (a) Applications will be accepted throughout the year and processed in the Council's Administrative Office.
 - (b) An applicant shall obtain a current application form from the Council's Administrative Office, respond truthfully and completely to every question or request for information contained in the form, and submit it along with all documentation and fees required by the form and this rule to

(Rule 1370-2-.05, continued)

the Council's Administrative Office. It is the intent of this Rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.

- (c) It is the applicant's responsibility to provide evidence that he has fulfilled the educational requirements by instructing his college to submit an official transcript to the Council's Administrative Office. The transcript must carry the official seal of the school and reference the name under which the applicant has applied for licensure. If the name under which the transcript is issued differs from the applicant's current name, documentation must be submitted which supports such applicant's name change.
- (d) An applicant shall pay, at the time of application, the non-refundable application fee provided in Rule 1370-2-.06.
- (e) An applicant shall pay, at the time of application, the examination fee pursuant to Rule 1370-2-.06.
- (f) Passage of the required examination(s) pursuant to Rule 1370-2-.08 is a prerequisite to licensure.
- (g) An applicant shall submit with his application a signed, passport-type photograph taken within the preceding twelve (12) months. The applicant must sign the photo and attach it to the appropriate page of the application.
- (h) An applicant shall provide documentation from a medical doctor that, in his professional opinion, the applicant is physically capable of practicing his profession.
- (i) An applicant shall submit with his application, a certified photocopy of his birth certificate.
- (j) An applicant shall provide evidence, in the form of a letter from a sponsor, that he has obtained a sponsor to provide training, direct supervision, and an outline of training.
- (k) An applicant shall disclose the circumstances surrounding any of the following:
 - 1. Conviction of any crime in any country, state, or municipality, except minor traffic violations.
 - 2. The denial of a licensure application or previous or pending discipline of a licensee by any state or country.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-118, 63-15-101, 63-15-103, 63-15-105, 63-15-107 through 63-15-111, 63-15-113, 63-15-117, 63-17-201, 63-17-203, 63-17-205, 63-17-107, 63-17-211, 63-17-214, and 63-17-219.

Administrative History: For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Amendment filed March 1, 1990; effective April 15, 1990. Amendment filed January 24, 1991; effective March 10, 1991. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.05 filed December 28, 1999; effective March 12, 2000. Amendment filed February 10, 2000; effective April 25, 2000.

1370-2-.06 FEES.

- (1) The fees authorized by the Tennessee Council for Hearing Instrument Specialists Act (T.C.A. §§63-17-201, et seq.) and other applicable statutes are established as follows:

(Rule 1370-2-.06, continued)

- (a) Application Fee - A nonrefundable fee to be paid by all applicants. It must be paid to the Council each time an application for licensure is filed, or a license is reactivated. This fee includes the Initial License Fee and /or the fee for Licensure by Reciprocity.
 - (b) Duplicate License or Duplicate Certificate Fee - A nonrefundable fee to be paid when an individual requests a replacement for a lost/destroyed “artistically designed” license or a lost/destroyed renewal certificate.
 - (c) Examination (and Retake) Fee - A nonrefundable fee to be paid each time an examination, or any component of an examination, is taken or retaken.
 - (d) Late Renewal Fee - a nonrefundable fee to be paid when licensee fails to timely renew his license. This is an additional fee which must be submitted along with the Licensure Renewal Fee (Biennial) and the State Regulatory Fee.
 - (e) Licensure Renewal Fee (Biennial) - A nonrefundable fee to be paid by all license and certificate holders prior to issuance of the “artistically designed” license on a biennial renewal basis. This fee also applies to individuals who reactivate a retired or lapsed certificate or license.
 - (f) State Regulatory Fee - To be paid by all individuals at the time of application and with all renewal applications.
 - (g) Written Endorsement/Verification Fee - A nonrefundable fee paid for each certification, verification, or endorsement of a licensee’s record for any purpose.
- (2) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Council for Licensing Hearing Instrument Specialists.
- (3) Fee Schedule

(a) Hearing Instrument Specialists

Type Fee	Amount
1. Application Fee	\$ 450.00
2. Duplicate License or Duplicate Certificate Fee	\$ 25.00
3. Written Endorsement/Verification Fee	\$ 20.00
4. Examination Fees	
(i) Written - 1st attempt	\$ 175.00
(ii) Written - Retake	\$ 175.00
(iii) Practical - 1st attempt	\$ 175.00
(iv) Practical - Retake	\$ 125.00

(Rule 1370-2-.06, continued)

5.	Late Renewal Fee	\$ 150.00
6.	Licensure Renewal Fee (Biennial)	\$ 700.00
7.	State Regulatory Fee (Biennial)	\$ 10.00
(b) Apprentice Hearing Instrument Specialist		
	Type Fee	Amount
1.	Application Fee	\$ 125.00
2.	Examination and Retake Fee	\$ 125.00
3.	State Regulatory Fee	\$ 10.00

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-118, 63-15-103, 63-15-111, 63-17-105, 63-17-203, 63-17-208, 63-17-209, 63-17-211, and 63-17-214. **Administrative History:** For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.06 filed December 28, 1999; effective March 12, 2000. Amendment filed February 10, 2000; effective April 25, 2000. Amendment filed April 17, 2003; effective July 1, 2003.

1370-2-.07 APPLICATION REVIEW, APPROVAL, DENIAL AND INTERVIEWS.

- (1) Application for licensure will be accepted throughout the year and processed in the Council's Administrative Office.
- (2) Review of all applications to determine whether or not the application file is complete may be delegated to the Council's Unit Director, provided that approval of all applications is made and ratified by the Council and Board.
- (3) A temporary authorization to practice may be issued to an applicant pursuant to T.C.A. § 63-1-142.
- (4) If an application is incomplete when received in the Council's Administrative Office, or the reviewing Council member or Council Consultant and a Board member or the Board's Consultant determine additional information is required from an applicant before an initial determination can be made, the applicant shall be notified and the necessary information requested by the Administrative Office. The applicant shall cause the requested information to be received in the Council's Administrative Office on or before the thirtieth (30th) day after receipt of the notification.
 - (a) Such notification shall be sent by certified mail, return receipt requested, from the Council's Administrative Office.
 - (b) If the requested information is not received within the thirty (30) day period, the application file shall be closed and the applicant notified that the Council will not consider issuance of a license until a new application is received pursuant to the rules governing that process, including another payment of all applicable fees.
 - (c) At no time may an applicant sit for the practical examination until the Council's Consultant/Board Consultant has made the initial determination that the documentation in the application file has been accepted.

(Rule 1370-2-.07, continued)

- (5) If a completed application file has been denied by the Council or the Board, the action shall become final and the following shall occur:
 - (a) A notification of the denial shall be sent to the applicant by the Council's Administrative Office by certified mail, return receipt requested. Specific reasons for the denial will be stated, such as incomplete information, unofficial records, failure of examination, and other matters judged insufficient for licensure, and such notification shall contain all the specific statutory and rule authorities for the denial.
 - (b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§ 4-5-201, et seq.) to contest the denial and the procedure necessary to accomplish that action.
- (6) If the Council or Board finds that it has erred in the issuance of a license, the Council will give written notice by certified mail, return receipt requested, of intent to revoke the license. The notice will allow the applicant the opportunity to meet the requirements of licensure within thirty (30) days from the date of receipt of the notification. If the applicant does not concur with the stated reason and the intent to revoke the license, the applicant shall have the right to proceed according to Rule 1370-2-.07(5)(b).
- (7) If all requirements for licensure are not completed within twelve (12) months from the date of receipt of the application, written notification will be mailed to the applicant, and the application file will be closed. Once the file has been closed, no further Council action will take place until a new application is submitted. Failure to complete all forms, provide requested information, submit all fees, take or retake required examinations within the specified time frame will be just cause for the application file to be closed. This action may be made by the Council's Unit Director.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-301, 63-1-142, 63-15-103, 63-15-111, 63-17-105, 63-17-203, 63-17-205, 63-17-211, and 63-17-213. **Administrative History:** For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.07 filed December 28, 1999; effective March 12, 2000. Amendment filed April 17, 2003; effective July 1, 2003.

1370-2-.08 EXAMINATIONS. All applicants for licensure as a hearing instrument specialist or for registration as an apprentice hearing instrument specialist must successfully complete the applicable examinations described in this rule. All other requirements for licensure or registration must be successfully completed before the Council will approve an applicant to take the examinations.

- (1) Hearing Instrument Specialist
 - (a) Written Examination - The Council adopts as its written licensure examination the International Hearing Society's sanctioned examination or its successor examination.
 1. The passing score shall be the overall passing score as determined by the International Hearing Society.
 2. If the applicant is currently licensed or has been licensed in another state as a hearing instrument specialist, the applicant shall direct the National Board for Certification in Hearing Instruments Sciences to submit evidence that he is currently certified by the NBC-HIS or the applicant shall direct the IHS to submit documentation that he has passed the written examination as provided in this rule.

(Rule 1370-2-.08, continued)

- (b) Practical Skills Examination - Successful completion of the written examination requirements must be accomplished before the Council will approve an applicant to take the practical skills examination.
 - 1. All applicants will be required to demonstrate knowledge in audiogram interpretation, advanced audiometric techniques, and unless successfully completed pursuant to subparagraph (2) (b) for registration as an apprentice, earmold impression technique.
 - 2. The passing score shall be a minimum of seventy-five percent (75%) on each section of the practical skills examination.
 - (c) Jurisprudence Examination
 - 1. Applicants will be tested on their knowledge of the HIS statute, Title 63, Chapter 17 of the T.C.A., and Council rules and regulations.
 - 2. The passing score shall be a minimum of seventy-five percent (75%).
- (2) Apprentice Hearing Instrument Specialist
 - (a) Written Examination
 - 1. Applicants will be tested on the content of the IHS Basic Course for Independent Study.
 - 2. The passing score shall be a minimum of seventy-five percent (75%) on each section of the written examination.
 - (b) Practical Skills Examination
 - 1. Applicants will be tested on basic audiometric technique and earmold impression technique.
 - 2. The passing score shall be a minimum of seventy-five percent (75%) on each section of the practical skills examination.
 - (c) Jurisprudence Examination
 - 1. Applicants will be tested on their knowledge of the HIS statute, Title 63, Chapter 17 of the T.C.A., and Council rules and regulations.
 - 2. The passing score shall be a minimum of seventy-five percent (75%).
 - (d) Successfully completing the written, practical, and jurisprudence examinations will qualify the applicant for apprenticeship if all other requirements have been met, pursuant to Rule 1370-2-.05.
- (3) Fees - Initial and retake examination fees, pursuant to Rule 1370-2-.06, must be received in the Council's Administrative Office prior to the examination date, except as provided in Paragraph (4).
- (4) Examination Retakes and Limitations
 - (a) An applicant who fails any section of either the written examination or the practical skills examination will be retested in the section(s) failed only.

(Rule 1370-2-.08, continued)

- (b) On or before the thirtieth (30th) day from receipt of the examination results, the applicant shall submit to the Council his retake fee. Failure to do so will result in the application file being closed. If closed, no further Council action will take place until a new application is received pursuant to the rules governing the application process, including payment of all fees.
 - (c) After three (3) failures of the written or practical skills examinations, the applicant must wait for twelve (12) months before sitting for a retake. During these twelve (12) months, the applicant must receive training assistance from a Tennessee licensed hearing instrument specialist. Within ninety (90) days of the applicant's notification of the third (3rd) examination failure, the applicant must notify the Council in writing of the name of the Tennessee licensed hearing instrument specialist who will provide the training.
- (5) Examination Proctors
 - (a) The Council, or its designated representatives, shall administer all examinations. The Council shall take any actions necessary to insure impartiality.
 - (b) Any Council member administering the practical skills examination may elect to recuse himself from administering the practical skills examination to a particular applicant.
 - (c) Any applicant taking the practical skills examination may, upon written request, have a Council member recused from administering such applicant's practical skills examination. The written request of the applicant should be received in the Council's Administrative Office at least ten (10) days prior to the scheduled examination.
- (6) Examination Dates and Sites - The location of the examinations shall be designated in advance by the Council and such shall be held not less than annually at such time and place as specified by the Council, if there are applicants eligible for the examinations. Examinations shall be given at other times as, in the opinion of the Council, the number of applicants warrants.
- (7) Examination Results - Examination results will be mailed to the applicant. Results are not provided by telephone, facsimile, or e-mail.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-17-105, 63-17-201, 63-17-203, 63-17-208, 63-17-209, and 63-17-210.

Administrative History: For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.08 filed December 28, 1999; effective March 12, 2000. Repeal and new rule filed April 17, 2003; effective July 1, 2003.

1370-2-.09 RENEWAL OF LICENSE.

- (1) Renewal Application.
 - (a) The due date for license renewal is the expiration date indicated on the licensee's renewal certificate.
 - (b) Methods of Renewal
 - 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org

(Rule 1370-2-.09, continued)

2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.
- (c) To be eligible for license renewal, an individual must submit to the Council's Administrative Office on or before the due date for renewal all of the following:
 1. A completed and signed renewal application form;
 2. The renewal and state regulatory fees as provided in Rule 1370-2-.06;
- (d) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-1-.10.
- (2) Reinstatement of an Expired License.
 - (a) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licensure processed pursuant to Rule 1200-10-1-.10.
 - (b) Reinstatement of a license that has expired may be accomplished upon meeting the following conditions:
 1. Payment of all past due renewal fees and state regulatory fees, pursuant to Rule 1370-2-.06; and
 2. Payment of the Late Renewal fee, pursuant to Rule 1370-2-.06; and
 3. Provide documentation of successfully completing continuing education requirements for every year the license was expired, pursuant to Rule 1370-2-.12; and
 4. Provide calibration of equipment certificates for each audiometer used at his/her place of business for every year the license was expired, pursuant to Rule 1370-2-.12.; and
 5. Provide copies of bills of sale for each audiometer sold at his/her place of business for every year the license was expired, pursuant to Rule 1370-2-.12.
 - (c) License reinstatement applications hereunder shall be treated as license applications, and review and decisions shall be governed by Rule 1370-2-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-15-103, 63-15-109, 63-15-113 through 63-15-115, 63-15-117, 63-15-118, 63-17-105, 63-17-203, 63-17-209, 63-17-213 through 63-17-215, 63-17-216, 63-17-217, and 63-17-218. **Administrative History:** For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.09 filed December 28, 1999; effective March 12, 2000. Amendment filed October 28, 2002; effective January 11, 2003.

(Rule 1370-2-.10, continued)

1370-2-.10 SUPERVISION. Direct Supervision as used in T.C.A. §63-17-206(b) is defined so as to require a sponsoring licensee to direct, review, and approve each act of service performed by an apprentice licensee in connection with the practice of dispensing and/or fitting hearing instruments, but does not require the constant actual physical presence of the sponsoring licensee.

- (1) A sponsor must review and co-sign all hearing tests and ear mold impressions given by an apprentice.
- (2) A sponsor must review and co-sign all bills of sale prepared by an apprentice.
- (3) A sponsor must keep a record of hearing tests and bills of sale prepared by an apprentice.
- (4) These records must be at all times during normal business hours available for on-site inspection(s) by a Council member or designee during the first ninety (90) days of the apprenticeship period.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-15-103, 63-15-106, 63-15-108, 63-15-114, 63-17-203, 63-17-206, 63-17-208, and 63-17-214. **Administrative History:** For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.10 filed December 28, 1999; effective March 12, 2000.

1370-2-.11 RETIREMENT AND REACTIVATION OF LICENSE.

- (1) A licensee who does not plan to practice in Tennessee and who therefore does not intend to use the title “licensed hearing instrument specialist” may apply to convert an active license to inactive (“retired”) status. An individual who holds a retired license will not be required to renew their license or to satisfy the renewal requirements.
- (2) A person who holds an active license may apply for licensure Retirement in the following manner:
 - (a) Request in writing from the Council’s Administrative Office an Affidavit of Retirement Form; and
 - (b) Complete and submit the Affidavit affirming that, while in retired status, the licensee will not practice or in any way indicate or imply that he holds an active Tennessee license or use within the State of Tennessee any words, letters, titles, or figures which indicate or imply that he is a licensed hearing instrument specialist.
- (3) A person who holds a retired license may apply to reactivate his license in the following manner:
 - (a) Submit a written request to the Council’s Administrative Office for licensure reactivation;
 - (b) Pay the current licensure renewal fee and state regulatory fee as provided in Rule 1370-2-.06 and, if retirement was pursuant to Rule 1370-2-.09 and reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Council will require payment of the late renewal fee, licensure renewal fees, and state regulatory fees as provided in rule 1370-2-.06; and
 - (c) Comply with the continuing education provision of Rule 1370-2-.12 applicable to reactivation of retired license.
- (4) Upon receipt of the request, renewal application, fees, and continuing education documentation, the Council shall consider the renewal application.

(Rule 1370-2-.12, continued)

- (5) License reactivation applications hereunder shall be treated as license applications, and review and decisions shall be governed by Rule 1370-2-.05, including payment of the application fee.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-15-103, 63-15-113, 63-17-203, and 63-17-213. **Administrative History:** (For history prior to November, 1987 see page 1.) New rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.11 filed December 28, 1999; effective March 12, 2000.

1370-2-.12 CONTINUING EDUCATION, CALIBRATION CERTIFICATES, AND BILLS OF SALE.

(1) Basic Requirements:

- (a) Continuing Education - Each licensee registered with the Council is required to successfully complete twenty (20) hours of continuing education each renewal cycle.
- (b) Calibration Certificates - Each licensee registered with the Council is required to retain calibration of equipment certificates for each audiometer used at his/her place of business during the calendar year.
- (c) Bills of Sale - Each licensee registered with the Council is required to retain copies of bills of sale for each hearing aid sold at his/her place of business during the calendar year.

(2) Documentation of Compliance:

- (a) Each licensee must retain documentation of completion of all requirements of this rule. This documentation must be retained for a period of four (4) years from the end of the calendar year in which the requirements were completed. This documentation must be produced for inspection and verification, if requested in writing by the Council during its verification process.
- (b) Acceptable continuing education documentation:
 - 1. Certificates or original letters from course providers verifying the licensee's attendance at continuing education program(s); or
 - 2. An original letter on official stationery from IHS verifying continuing education, specifying date, continuing education hours, program title, licensee's name, and license number.
- (c) The individual must, within thirty (30) days of a request from the Council, provide documentation of successfully completing this rule's requirements.

- (3) The Council does not preapprove continuing education programs. It is the licensee's responsibility, using his professional judgment, to determine whether or not the continuing education course is applicable and appropriate and meets the guidelines specified in this section.

(a) Continuing education credit will not be allowed for the following:

- 1. Regular work activities, administrative staff meetings, case staffing/ reporting, etc.
- 2. Membership in, holding office in, or participation on boards or committees, business meetings of professional organizations, or banquet speeches.

(Rule 1370-2-.12, continued)

3. Independent unstructured or self-structured learning.
 4. Training specifically related to policies and procedures of an agency.
 5. Non-hearing instrument specialist dispensing content courses in excess of four (4) hours - examples: computer, finance or business management.
- (b) Continuing education hours that are clearly not hearing instrument specialist related will be unacceptable.
- (4) Continuing Education for Reactivation or Reinstatement of Retired, Revoked, or Expired Licensure.
- (a) Reactivation of Retired Licensure.
1. An individual whose license has been retired for less than one (1) year will be required to fulfill continuing education requirements as outlined in this rule as a prerequisite to reactivation. Those hours will be considered replacement hours and cannot be counted during the next licensure renewal period.
 2. Any individual requesting reactivation of a license which has been retired for one (1) or more years must submit, along with the reactivation request, verification which indicates the attendance and completion of ten (10) hours of continuing education for each year the license was retired. The continuing education hours must have been started and successfully completed within twelve (12) months immediately preceding the date of requested reactivation.
- (b) Reactivation of Revoked Licensure.
1. No person whose license has been revoked for failure to comply with continuing education may have his/her license reactivated without complying with these requirements. Continuing education requirements will accumulate at the same rate as for those licenses which are active. The required clock hours of continuing education must have been begun and successfully completed before the date of reactivation.
 2. Notwithstanding the provisions of part (4) (b) 1., on written request and approval by the Council, a licensee has the option to take and pass the written and practical sections of the examination given by the Council in lieu of fulfilling the continuing education requirement. The current examination fee, pursuant to rule 1370-2-.06, will be applicable.
- (c) Reinstatement of Expired Licensure – No person whose license has expired may have his/her license reinstated without submitting evidence of continuing education. The continuing education hours documented at the time of reinstatement must equal the hours required, had the license remained in an active status, and must have been begun and successfully completed before the date of reinstatement.
- (d) Continuing education hours obtained as a prerequisite for reactivating or reinstating a license may not be counted toward the calendar year requirement.
- (5) Violations

(Rule 1370-2-.12, continued)

- (a) Any licensee who falsely certifies attendance and completion of the required hours of continuing education requirements, or who does not or can not adequately substantiate completed continuing education hours with the required documentation, may be subject to disciplinary action.
- (b) Prior to the institution of any disciplinary proceedings, a letter shall be issued to the last known address of the individual stating the facts or conduct which warrant the intended action.
- (c) The licensee has thirty (30) days from the date of notification to show compliance with all lawful requirements for the retention of the license.
- (d) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (5) (b) above may be subject to disciplinary action.
- (e) Continuing education hours obtained as a result of compliance with the terms of a Council Order in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any renewal period.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-15-103, 63-17-105, 63-15-117, 63-17-203, 63-17-214, 63-17-219, and 63-17-220. **Administrative History:** Original rule filed December 2 1980; effective June 16, 1981. Repeal filed September 24, 1987; effective December 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.12 filed December 28, 1999; effective March 12, 2000. Amendment filed October 28, 2002; effective January 11, 2003.

1370-2-.13 UNETHICAL CONDUCT - The Council and the Board have the authority to deny, revoke or suspend for a period of time, or assess by monetary fine any person holding a license to practice as a hearing instrument specialist. "Unethical Conduct" shall include, but is not limited to, the following offenses:

- (1) Violation of laws regarding the fitting and dispensing of hearing instruments in any other state by a person licensed by this Council, while he is visiting or residing in such other state, shall be considered as unethical conduct by the Council.
- (2) A hearing aid product or instrument may be guaranteed against mechanical or electronic defects or poor workmanship, but the degree of help from the use of or the results obtained in the wearing of a hearing aid are dependent upon uncontrollable factors, including the proper use or operation of the device. Therefore, any guarantee, warranty or representation expressed or implied as to the degree or amount of help or improvement shall be considered deceptive or misleading.
- (3) Failure of a license holder to abide by the terms of any contract or agreement concerning the sale or dispensing of hearing instruments.
- (4) Engaging in unfair or deceptive acts specifically prohibited by T.C.A. §47-18-104(b) of the Tennessee Consumer Protection Act of 1977, while engaging in the business enterprise which is the practice of dispensing and fitting hearing instruments.
- (5) The obtaining of any fee or the making of any sale by fraud or misrepresentation.
- (6) Using, causing, or promoting the use of any advertising material, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceptive or untruthful.

(Rule 1370-2-.13, continued)

- (7) Advertising a particular model, type or kind of hearing aid for sale, when purchasers, responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type, or kind where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type, or kind than that advertised.
- (8) Representing that the services or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing instruments when it is not true, or using the word “doctor” or like words, abbreviations or symbols which tend to denote the medical profession when such use is not accurate.
- (9) Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors or stimulants in such manner as to adversely affect the person’s ability to practice.
- (10) Permitting another to use his license.
- (11) To defame competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or falsely to disparage the products of competitors in any respect, or their business methods, selling prices, values, credit terms, policies, or services.
- (12) To exhibit competitive products in his shop or in his advertising in such manner as to falsely discredit them or to represent falsely that competitors are unreliable.
- (13) To quote prices of competitive hearing instruments or devices without disclosing that they are not the current prices or to show, demonstrate, or represent competitive models as being current models when such is not the fact.
- (14) To imitate or simulate the trademarks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers.
- (15) To use in advertising the name, model name, or trademark of a particular manufacturer of hearing instruments in such manner as to imply a relationship with the manufacturer which does not exist or otherwise to mislead or deceive purchasers or prospective purchasers.
- (16) To use any trade name, corporate name, trademark, or other trade designations which have the capacity and tendency or effect of misleading or deceiving purchasers as to the name, nature, or origin of any product of the industry, or of any material used therein, or which is false, deceptive, or misleading in any other material respect.
- (17) No licensee shall allow an apprentice, agent, servant, employee, or other representative who does not hold a current or unsuspended license to advertise or otherwise make representations to the public that he offers services included in the practice of dispensing and fitting hearing instruments as defined in T.C.A. §63-17-201 or the rules and regulations of the Council.
- (18) Failure to comply with the continuing education requirement as set by the Council or falsely reporting CE hours attended.
- (19) Violation of any rule or statute of the Council.

Authority: Public Chapter 389, Acts of 1989 and T.C.A. §§4-5-202, 4-5-204, 63-1-116, 63-1-134, 63-15-117, 63-15-120, 63-17-203, 63-17-219, and 63-17-222. **Administrative History:** Original rule filed January 9, 1991; effective February 23, 1991. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.13 filed December 28, 1999; effective March 12, 2000.

(Rule 1370-2-.14, continued)

1370-2-.14 APPRENTICESHIP TRAINING PROGRAM.

- (1) Any person wishing to practice the profession of Hearing Instrument Specialist dispensing and who intends to fulfill the requirements via the apprenticeship provision shall register with the Council pursuant to rule 1370-2-.05.
- (2) Apprenticeship training must be supervised by a Tennessee licensed Hearing Instrument Specialist who possesses a current, unsuspended and unrevoked Tennessee license and who dispenses on the premises.
- (3) Changes in the information provided in the original apprentice application shall be reported to the Council in writing within ten (10) working days of such change.
- (4) Pursuant to T.C.A. §63-17-208(d) the period of apprenticeship training must be no longer than one (1) calendar year from date of issuance of the apprenticeship license. The apprentice license cannot be extended or renewed.
- (5) Sponsor Supervision
 - (a) A licensed HIS may supervise no more than two (2) apprentices concurrently.
 - (b) The apprentice shall function under the direct supervision, as provided in rule 1370-2-.10 of the sponsoring licensed HIS for a period of at least ninety (90) days after passage of the examinations, pursuant to rule 1370-2-.08(2). During the ninety (90) day period, the sponsoring HIS must make the final selection and fitting of the hearing aid.
 - (c) At no time may an apprenticeship continue the apprentice training program without the sponsorship of a licensed HIS and such sponsorship being recorded in writing with the Council's Administrative Office.
 - (d) An apprentice license shall not be issued unless the applicant shows to the satisfaction of the Council that he/she will be supervised and trained by a person who holds a valid Tennessee HIS license.
 - (e) Prior to up-grading by an apprentice to a licensed Hearing Instrument Specialist, he must show proof of having obtained sixty (60) classroom hours of course work approved by the National Institute for Hearing Instrument Studies.
 - (f) Violation of or departure from any rule set forth by apprenticeship will be grounds for disciplinary action and/or civil penalties pursuant to Rules 1370-2-.13 and .15.
- (6) HIS licensure.

Ninety (90) days after an apprentice license is issued, an individual so licensed may make application to the Council to upgrade to HIS licensure status and to take the written and practicum examinations pursuant to rule 1370-2-.05(1) and 1370-2-.08(1).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-15-103, 63-15-109 through 63-15-111, 63-17-203, 63-17-206, 63-17-208, 63-17-209, 63-17-210, and 63-17-211. **Administrative History:** Original rule filed January 9, 1991; effective February 23, 1991. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.14 filed December 28, 1999; effective March 12, 2000.

(Rule 1370-2-.14, continued)

1370-2-.15 DISCIPLINARY ACTIONS, CIVIL PENALTIES, INFORMAL SETTLEMENTS, ASSESSMENT OF COSTS, AND SUBPOENAS.

- (1) Upon a finding by the Council and the Board that a hearing instrument specialist or apprentice hearing instrument specialist has violated any provision of the T.C.A. §§63-17-201, et seq., or the rules promulgated thereto, the Council may impose any of the following actions separately or in any combination which is deemed appropriate to the offense.
 - (a) Informal Settlement - This is a written action issued to the hearing instrument specialist or apprentice hearing instrument specialist for minor or near infractions. It is informal in nature and does not constitute a formal disciplinary action.
 - (b) Reprimand - This is a written action issued to a hearing instrument specialist or apprentice hearing instrument specialist for one time and less severe violations. It is a formal disciplinary action.
 - (c) Probation - This is a formal disciplinary action which places a hearing instrument specialist or apprentice hearing instrument specialist on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and may restrict the individual's activities during the probationary period.
 - (d) Licensure Suspension - This is a formal disciplinary action which suspends an individual's right to practice for a fixed period of time. It contemplates the re-entry of the individual into the practice under the license previously issued.
 - (e) Licensure Revocation - This is a most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the license previously issued. If revoked, it relegates the violator to the status he possessed prior to application for licensure. No application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one (1) year, unless otherwise stated in the Council's Revocation Order.
 - (f) Conditions - Any action deemed appropriate by the Council to be required of an individual disciplined during any period of probation or suspension or as a prerequisite to the lifting of probation or suspension.
 - (g) Civil Penalty - A monetary disciplinary action assessed by the Council pursuant to paragraph (2) of this rule.
- (2) Civil Penalties
 - (a) Purpose - The purpose of this rule is to set a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to T.C.A. §63-1-134.
 - (b) Schedule of Civil Penalties
 1. A Type A Civil Penalty may be imposed whenever the Council finds a person who is required to be licensed, certified, permitted, or authorized by the Council to be guilty of a willful and knowing violation of the Practice Act, or regulations pursuant thereto, to such an extent that there is, or is likely to be, an imminent, substantial threat to the health, safety and welfare of an individual patient or the public. For the purpose of this section, willfully and knowingly practicing hearing aid dispensing without a license or

(Rule 1370-2-.15, continued)

certification issued by the Council and Board is one of the violations of the Hearing Instrument Specialist Practice Act for which a Type A civil penalty is assessable.

2. A Type B Civil Penalty may be imposed whenever the Council finds the person required to be licensed, certified, permitted, or authorized by the Council is guilty of a violation of the Hearing Instrument Specialist Practice Act, or regulations pursuant thereto, in such manner as to impact directly on the care of patients or the public.
3. A Type C Civil Penalty may be imposed whenever the Council finds the person required to be licensed by the Council is guilty of a violation of the Hearing Instrument Specialist Practice Act, or regulations promulgated thereto, which are neither directly detrimental to the patients or public, nor directly impact their care, but have only indirect relationship to patient care or the public.

(c) Amount of Civil Penalties

1. Type A Civil Penalties shall be assessed in the amount of not less than \$500 or more than \$1,000.
2. Type B Civil Penalties may be assessed in the amount of not less than \$100 and not more than \$500.
3. Type C Civil Penalties may be assessed in the amount of not less than \$50 and not more than \$100.

(d) Procedures for Assessing Civil Penalties.

1. The Division of Health Related Boards may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty, and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.
2. Civil Penalties may also be initiated and assessed by the Council during consideration of any Notice of Charges. In addition, the Council may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Division.
3. In assessing the civil penalties pursuant to these rules, the Council may consider the following factors:
 - (i) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (ii) The circumstances leading to the violation;
 - (iii) The severity of the violation and the risk of harm to the public;
 - (iv) The economic benefits gained by the violator as a result of non-compliance; and
 - (v) The interest of the public.

(Rule 1370-2-.15, continued)

4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of Title 4, Chapter 5, Tennessee Code Annotated.
- (3) Informal Settlements - The Council consultant is authorized to enter into Informal Settlement Agreements pursuant to Rule 1370-2-.15(1)(a) under which a complaint against an individual may be closed without any disciplinary action. Such agreements may include any terms deemed appropriate by the Council consultant including, but not limited to:
 - (a) Mandatory education program or course attendance.
 - (b) Submission of reports, records or other appropriate documentation.
 - (c) Conditioning of the individual's activities in any manner which affects his practice in Tennessee.
- (4) Assessment of Costs - The imposition of a requirement that any person against whom sanctions have been imposed as a result of a disciplinary action pay the actual and reasonable costs of the prosecution of the case. When the Council, in any final order, requires the "payment of costs", that requirement includes payment of the following:
 - (a) All costs attributed to and assessed against the Council by the Division's Bureau of Investigations in connection with the prosecution of the matter including all investigator time, travel and lodging incurred during the prosecution.
 - (b) All costs assessed against the Council by the Division for the use of the Division facilities and personnel for prosecution of the matter.
 - (c) All costs assessed against the Council for the appearance fees, transcripts, time, travel and lodging of administrative law judges and court reporters and witnesses required in the prosecution of the matter.
- (5) Subpoenas
 - (a) Purpose - Although this rule applies to persons and entities other than hearing instrument specialists, it is the Council's intent as to hearing instrument specialists that they be free to practice their profession without fear that such practice or its documentation will be unduly subjected to scrutiny outside the profession. Consequently, balancing that intent against the interest of the public and patients to be protected against substandard care and activities requires that persons seeking to subpoena such information and/or materials must comply with the substance and procedures of these rules.

It is the intent of the Council that the subpoena power outlined herein shall be strictly proscribed. Such power shall not be used by the division or council investigators to seek other incriminating evidence against hearing instrument specialists when the division or council does not have a complaint or basis to pursue such an investigation. Thus, unless the division or its investigators have previously considered, discovered, or otherwise received a complaint from either the public or a governmental entity, then no subpoena as contemplated herein shall issue.
 - (b) Definitions - As used in this chapter of rules the following words shall have the meanings ascribed to them:
 1. Probable Cause

(Rule 1370-2-.15, continued)

- (i) For Investigative Subpoenas - shall mean that probable cause, as defined by case law at the time of request for subpoena issuance is made, exists that a violation of the Licensure Act for Communication Disorders and Sciences or rules promulgated pursuant thereto has occurred or is occurring and that it is more probable than not that the person(s), or items to be subpoenaed possess or contain evidence which is more probable than not relevant to the conduct constituting the violation.
 - (ii) The utilization of the probable cause evidentiary burden in proceedings pursuant to this rule shall not in any way, nor should it be construed in any way to establish a more restrictive burden of proof than the existing preponderance of the evidence in any civil disciplinary action which may involve the person(s) or items that are the subject of the subpoena.
 - 2. Presiding Officer - For investigative subpoenas shall mean any elected officer of the Council, or any duly appointed or elected chairperson of any panel of the Council.
- (c) Procedures
- 1. Investigative Subpoenas
 - (i) Investigative Subpoenas are available only for issuance to the authorized representatives of the Tennessee Department of Health, its investigators and its legal staff.
 - (ii) An applicant for such a subpoena must either orally or in writing notify the Council's Unit Director of the intention to seek issuance of a subpoena. That notification must include the following:
 - (I) The time frame in which issuance is required so the matter can be timely scheduled; and
 - (II) A particular description of the material or documents sought, which must relate directly to an ongoing investigation or contested case, and shall, in the instance of documentary materials, be limited to the records of the patient or patients whose complaint, complaints, or records are being considered by the division or council.
 - I. In no event shall such subpoena be broadly drafted to provide investigative access to hearing instrument records of other patients who are not referenced in a complaint received from an individual or governmental entity, or who have not otherwise sought relief, review, or Council consideration of a hearing instrument specialist's conduct, act, or omission.
 - II. If the subpoena relates to the prescribing practices of a licensee, then it shall be directed solely to the records of the patient(s) who received the pharmaceutical agents and whom the board of pharmacy or issuing pharmacy(ies) has so identified as recipients; and

(Rule 1370-2-.15, continued)

- (III) Whether the proceedings for the issuance are to be conducted by physical appearance or electronic means; and
 - (IV) The name and address of the person for whom the subpoena is being sought or who has possession of the items being subpoenaed.
- (iii) The Council's Unit Director shall cause to have the following done:
- (I) In as timely a manner as possible arrange for either an elected officer of the Council, or any duly appointed or elected chairperson of the Council, to preside and determine if issuing the subpoena should be recommended to the full Council; and
 - (II) Establish a date, time and place for the proceedings to be conducted and notify the presiding officer, the applicant and the court reporter; and
 - (III) Maintain a complete record of the proceedings including an audio tape in such a manner as to:
 - I. Preserve a verbatim record of the proceeding; and
 - II. Prevent the person presiding over the proceedings and/or signing the subpoena from being allowed to participate in any manner in any disciplinary action of any kind formal or informal which may result which involves either the person or the documents or records for which the subpoena was issued.
- (iv) The Proceedings
- (I) The applicant shall do the following:
 - I. Provide for the attendance of all persons whose testimony is to be relied upon to establish probable cause; and
 - II. Produce and make part of the record copies of all documents to be utilized to establish probable cause; and
 - III. Obtain, complete and provide to the presiding officer a subpoena which specifies the following:
 - A. The name and address of the person for whom the subpoena is being sought or who has possession of the items being subpoenaed; and
 - B. The location of the materials, documents or reports for which production pursuant to the subpoena is sought if that location is known; and
 - C. A brief, particular description of any materials, documents or items to be produced pursuant to the subpoena; and
 - D. The date, time and place for compliance with the subpoena.

(Rule 1370-2-.15, continued)

- IV. Provide the presiding officer testimony and/or documentary evidence which in good faith the applicant believes is sufficient to establish that probable cause exists for issuance of the subpoena as well as sufficient proof that all other reasonably available alternative means of securing the materials, documents or items have been unsuccessful.

(II) The Presiding Officer shall do the following:

- I. Have been selected only after assuring the Council's Unit Director that he or she has no prior knowledge of or any direct or indirect interest in or relationship with the person(s) being subpoenaed and/or the licensee who is the subject of the investigation; and
- II. Commence the proceedings and swear all necessary witnesses; and
- III. Hear and maintain the confidentiality, if any, of the evidence presented at the proceedings and present to the full Council only that evidence necessary for an informed decision; and
- IV. Control the manner and extent of inquiry during the proceedings and be allowed to question any witness who testifies; and
- V. Determine based solely on the evidence presented in the proceedings whether probable cause exists and if so, make such recommendation to the full Council and
- VI. Sign the subpoena as ordered to be issued; and
- VII. Not participate in any way in any other proceeding whether formal or informal which involves the matters, items or person(s) which are the subject of the subpoena. This does not preclude the presiding officer from presiding at further proceedings for issuance of subpoenas in the matter.

(III) The Council shall do the following:

- I. By a vote of two thirds (2/3) of the members to which the Council is entitled, issue the subpoena for the person(s) or items specifically found to be relevant to the inquiry, or quash or modify an existing subpoena by a majority vote; and
- II. Sign the subpoena as ordered to be issued, quashed or modified.

- 2. Post-Notice of Charges Subpoenas - If the subpoena is sought for a contested case being heard with an Administrative Law Judge from the Secretary of State's office presiding, this definition shall not apply and all such post-notice of charges subpoenas should be obtained from the office of the Administrative Procedures Division of the Office of the Secretary of State pursuant to the Uniform Administrative Procedures Act and rules promulgated pursuant thereto.

(d) Subpoena Forms

(Rule 1370-2-.15, continued)

1. All subpoena shall be issued on forms approved by the Council.
 2. The subpoena forms may be obtained by contacting the Council's Administrative Office.
- (e) Subpoena Service - Any method of service of subpoenas authorized by the Tennessee Rules of Civil Procedure or the rules of the Tennessee Department of State, Administrative Procedures Division may be utilized to serve subpoenas pursuant to this rule.

Authority: T.C.A. §§4-5-105, 4-5-202, 4-5-204, 4-5-311, 63-1-134, 63-17-105, 63-15-117 through 63-15-120, 63-17-203, 63-17-219, 63-17-220, and 63-17-221. **Administrative History:** Original rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.15 filed December 28, 1999; effective March 12, 2000. Amendment filed February 10, 2000; effective April 25, 2000. Amendment filed February 20, 2002; effective May 6, 2002.

1370-2-.16 LICENSE.

- (1) Issuance - Upon the Council determining that an applicant for licensure has successfully met all the requirements as set forth in T.C.A. §63-17-201, et seq., and these rules, and upon receipt within thirty (30) days of notification in writing of such status, the applicant is required to submit to the Council's office the initial license fee pursuant to Rule 1370-2-.12.
- (2) Display of License - Every person engaged in the fitting and dispensing of hearing instruments in this state shall display his license in a conspicuous place in his principal office and, whenever required, exhibit such license to the Council or its authorized representative.
- (3) Replacement License - A licensee whose "artistically designed" document or wall license has been lost or destroyed may be issued a new wall license upon receipt of a written request in the Council Administrative Office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original license, a recent photograph which has been signed by the licensee on the back, and the required fee pursuant to Rule 1370-2-.06. This process shall be accomplished by the Council's Unit Director.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-106, 63-15-103, 63-1-109, 63-15-105, 63-15-111, 63-17-203, 63-17-205, and 63-17-211. **Administrative History:** Original rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.16 filed December 28, 1999; effective March 12, 2000.

1370-2-.17 CHANGE OF ADDRESS AND/OR NAME.

- (1) Before engaging in the practice of fitting or selling hearing instruments, each licensee shall notify the Council in writing of the address of his primary business where he is to engage, or intends to engage, in the fitting or selling of hearing instruments.
- (2) If any changes occur in his place of business, the licensee must notify the Council's Administrative Office in writing within thirty (30) days of such change and reference the individual's name, profession, and license number. Failure to give such notice of the business address change shall be deemed just cause for disciplinary action by the Council.
- (3) Each person holding a license who has had a change of address shall file in writing with the Council his current mailing address, giving both old and new address. Such requests should be received in the Council's Administration Office no later than thirty (30) days after such change has occurred and reference the licensee's name, profession, and license number.

- (4) Change of name - A Licensee registered with the Council shall notify the Council's Administrative Office in writing, within thirty (30) days of a name change. A copy of the official document evidencing the name change shall be included. Such request must reference the licensee's profession and license number.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-106, 63-1-108, 63-15-112, 63-17-203, and 63-17-212.

Administrative History: Original rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.17 filed December 28, 1999; effective March 12, 2000.

1370-2-.18 MANDATORY RELEASE OF CLIENT RECORDS.

- (1) Upon written request from a client or the client's authorized representative, licensees shall provide a complete copy of the client's records or summary of such records maintained by the licensee within ten (10) working days.
- (2) The individual requesting the records shall be responsible for payment of a reasonable fee in advance to the licensee for copying and mailing of the records.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-2-101, 63-2-102, and 63-17-203. **Administrative History:** Original rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.18 filed December 28, 1999; effective March 12, 2000.

1370-2-.19 COUNCIL MEETINGS, OFFICERS, CONSULTANTS, RECORDS, AND DECLARATORY ORDERS.

- (1) The Council may elect annually from its membership a chairperson and a secretary who each shall hold office for one (1) year or until the election and qualification of a successor.
 - (a) Chairperson - presides at all Council meetings.
 - (b) Secretary - who along with the Council administrator shall be responsible for correspondence from the Council.
- (2) Council meetings - The Council shall meet at least once each year at a place and time determined by the Chair, and shall also meet at such other times and places as may be appropriate.
- (3) The Council has the authority to select a Consultant, as approved by the Board, who shall serve as a Consultant to the Division.
- (4) Records and Complaints
 - (a) All requests, applications, notices, other communications and correspondence shall be directed to the Council's Administrative Office. Any requests or inquiries requiring a Council decision or official Council action except documents relating to disciplinary actions or hearing requests must be received fourteen (14) days prior to a scheduled Council meeting and will be retained in the Administrative Office and presented to the Council at the Council meeting. Such documentation not timely received shall be set over to the next Council meeting.
 - (b) All records of the Council, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the Council's Administrative Office.
 - (c) Copies of public records shall be provided to any person upon payment of the cost of copying.

(Rule 1370-2-.19, continued)

- (d) Complaints made against a licensed practitioner become public information only upon the filing of a notice of charges by the Department of Health.
- (e) All complaints should be directed to the Investigations Section of Health Related Boards.
- (5) Declaratory Orders - The Board adopts, as if fully set out herein, rule 1200-10-1-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Board shall be addressed by the Board pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Board's administrative office.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-223, 4-5-224, 63-1-115, 63-15-102, 63-15-103, 63-17-202, 63-17-203 and 63-17-204. **Administrative History:** Original rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.19 filed December 28, 1999; effective March 12, 2000. Amendment filed February 10, 2000; effective April 25, 2000.

1370-2-.20 ADVERTISING. Advertising is governed by the proscriptions specifically set out in Rule 1370-2-.13 governing Unethical Conduct.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-116, and 63-17-203. **Administrative History:** Original rule filed December 28, 1999; effective March 12, 2000.

1370-2-.21 RECORDS, SERVICES AND TESTS.

- (1) Records
 - (a) Client's Record. The record for each client shall include a case history, the results of all required tests and a legend (key) explaining the symbols of results used in the audiogram. Records of the required test and dispensing procedures shall be maintained as a part of the client's file and shall show also the model number or name, serial number, type of circuit response or any adjustment made on instruments that have adjustable circuits. Such records shall be maintained and preserved for a minimum of three (3) years after the last entry in the records.
 - (b) Orientation Program. Every hearing aid client shall be offered at the site of the sale a personalized counseling program provided by the HIS or an individual licensed by the Council. The counseling program shall be provided with each new fitting and designed to ensure that proper use and operation of the instrument are understood by the client.
 - (c) Earmold. Every air conduction fitting that requires an earmold shall include a properly fitting custom earmold except in cases where, in the dispenser's judgment, the client would be better fitted without the use of a new mold. In special fittings where an earmold is not required, such shall be noted in the record.
 - (d) Examination of the Ear. The dispenser shall make an examination of the client's external ears by means of an otoscope, or other instrument designed for that purpose, before any audiometric test is made and before and after the making of an earmold impression. Any abnormality detected by this inspection must be reported to the client and the client advised to seek medical advice and this shall be recorded on the test record.

(Rule 1370-2-.21, continued)

- (2) Bill of Sale for hearing equipment - To insure that appropriate follow up services are available to consumers in Tennessee, licensees shall deliver to each person supplied with a hearing instrument a bill of sale which contains each of the following:
 - (a) The signature of the licensed hearing instrument specialist, the address of the specialist's regular place of business, the specialist's license number with an expiration date.
 - (b) The make and model of the hearing instrument supplied and the amount charged including a description, i.e., new, used, rebuilt.
 - (c) Clear statement of terms of sale including provisions required by T.C.A. § 63-17-217.
 - (d) Name and address of the Council.
 - (e) Statement that the Council will receive complaints on any matter relating to the fitting and dispensing of hearing instruments.
 - (f) If the licensee has no location in Tennessee, an outline of follow up services must be made available to Tennessee residents who purchase the dealer's services within Tennessee.
- (3) Tests
 - (a) Puretone Audiometry
 - 1. Thresholds shall be determined for each ear with air and bone conducted puretone stimuli. Air conduction stimuli must include 0.5, 1, 2, and 4K Hertz. Bone conduction stimuli must include .05, 1, 2, and 4K Hertz. On a client whose bone conduction threshold has been previously charted and that chart is a part of the client's permanent record, the licensee, at his discretion, may omit any new bone conduction testing, if there has been no appreciable change in the air conduction thresholds.
 - 2. Appropriate masking must be used with air and bone conducted stimuli whenever necessary to obtain valid results.
 - (b) Discrimination Tests. There shall be a measurement of the client's speech discrimination ability at each ear using widely recognized test material prior to fitting. Appropriate masking must be used with speech stimuli whenever necessary to obtain valid results.
 - (c) Post-Fitting Tests. There shall be a measurement of the client's hearing ability using widely recognized test material while the client is wearing the selected hearing aid(s) adjusted for the selection gain, M.P. output, and frequency response.
 - (d) Tests for Tolerance. There shall be a measurement of the client's tolerance for amplified auditory stimuli using speech, puretones, or a complex signal representative of the speech spectrum (0.5, 1 and 2K Hz) or a method deemed acceptable by the Council.
 - (e) Omitted Tests.
 - 1. The required tests may be omitted only under the most unusual circumstances, such as the inability of the client to perform the task.
 - 2. When a fitting is being made upon referral, the specified tests may be omitted if the referring source has forwarded to the dispenser copies of those test results. However,

(Rule 1370-2-.21, continued)

these tests must have been performed within ninety (90) days. The licensed dispenser who omits specified tests and accepts tests performed by referring professional shall orally inform and conspicuously set forth in the sales contract that the hearing aid dispenser is not responsible for the validity and accuracy of the tests.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-15-101, 63-15-103, 63-15-110, 63-15-114, 63-15-115, 63-17-201, 63-17-203, 63-17-210, 63-17-214, and 63-17-215. **Administrative History:** Original rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.20 filed December 28, 1999; effective March 12, 2000.